IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12792 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANSABEN D/O AJABRAO TULSIRAO MARATHA

Versus

COMMISSIONER OF POLICE, AHMEDABAD CITY

Appearance:

1. Special Civil Application No. 12792 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging her detention in pursuance of the order passed against her by the Police Commissioner, Ahmedabad City on 26th July, 2004 in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short]. The petitioner is under detention as bootlegger from 26th July, 2004, in pursuance of the above said order.

2. The grounds of detention as placed on record depict that in all four offences came to be registered against the petitioner, all before Madhavpura Police Station on 7th January, 2002, 27th March, 2004, 1st June, 2004 and 17th July, 2004 under the Bombay Prohibition Act whereby it was alleged that the petitioner was found in possession of some quantity of country liquor. After going through the investigation papers thoroughly, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting the country liquor and, therefore, was bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith. The detaining authority, after considering the steps, which may be taken against the petitioner in general law, came to the conclusion that there was no other alternative, except the detention of the detenu under the PASA Act to prevent bootlegging activities. The detaining authority, therefore, passed an order of detention of the petitioner, which is under challenge in this petition.

3. Learned advocate Mr.Kamlesh Kachhavah, for the petitioner and learned AGP Mrs.H.B.Punani, for the respondent No.3 were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was sufficient material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

5. To reach to a subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of the public order and public health, the detaining authority must rely upon cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or wide spread danger to life, property or the public health. In this exercise the detaining authority must draw a line between activities which can be said "breach of law and order" and "breach of public order". Now referring to the above four cases filed against the petitioner under the Bombay Prohibition Act and the investigation papers as placed on record, it is clear that those cases are filed against the petitioner are on the ground that she was dealing in liquor, in breach of law. At the most, the cases filed against the petitioner can be categorized to be the activities in breach of law and order. The activities reveal through the investigation papers cannot be termed as activities disturbing the public order or adversely affecting the public health. It is fall out, reach and impact of the activities which decides that particular activity is disturbing the public order. The criminal cases filed against the petitioner for dealing in liquor, therefore, have no bearing on the question of maintenance of public order. For the breach of law as committed by the petitioner, the cases are filed against her and she is going to be tried for that and may be punished, if found guilty, but surely the act constituting the offence cannot be said to have affected the even tempo of the life of the community. No other material except investigating papers was placed before the detaining authority. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of the public order and public health by alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

6. In the result, in view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 26th July, 2004 against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner HANSABEN D/O AJABRAO TULSIRAO MARATHA is hereby ordered to be set at liberty forthwith, if she is not required to be detained in Jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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